

The 24th March, 1995

No. 14/13/87-6Lab./412.—In pursuance of the provisions of section 12 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s. Director, Central State Farm, Sirsa, Road, Hisar *versus* Maha Singh.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 320 of 90

Date of receipt : 20-3-90

Date of decision : 2-3-95

SHRI MAHA SINGH, SON OF SHEO SINGH, V.P.O. CHIKKANWAS (BLOCK),
DISTRICT HISAR

Applicant

versus

DIRECTOR, CENTRAL STATE FARM, SIRSA ROAD, HISAR

Respondent/mgt.

Presents :

Shri Darshan Singh, for the workman.

Shri O.P. Jain, for the management.

AWARD

In exercise of the powers conferred by clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act') the Governor of Haryana referred the following dispute between Maha Singh and the above mentioned management for adjudication to this Court,—*vide* Labour Department letter No. Hsr/5-90/9838—43, dated 7th March, 1990:—

Whether termination of services of Maha Singh is justified and in order? If not, to what relief is he entitled?

2. According to the workman, he was appointed as Beldar by the management in September, 1986 and he worked as such upto 27th July, 1989, on which date his services were terminated without serving him any notice and without paying him any retrenchment compensation. He, therefore, claimed that the termination of his services, was illegal, being violative of Sections 25-F and 25-G of the Act. He, therefore, prayed for reinstatement with full back wages and other consequential benefits.

3. The management, in its written statement, pleaded that workman was engaged as daily paid labour. It was stated that on 27th July, 1989, the workman and his companion were reported to have stolen one bag of gram each from the godown of the farm and the matter was reported to the notice and a case was registered by the police,—*vide* FIR No. 305, dated 28th July, 1989 under Section 380 IPC. It was stated that the applicant was arrested in that case and the case was still pending in Court. Thereafter the workman never come to the farm to do the job of daily paid labour and it was claimed that the services of the workman were not terminated and the provisions of Section 25-F and 25-G of the Act were not applicable in this case.

4. On the above pleadings of the parties, the following issues were framed by my learned predecessor on 11th April, 1991:—

1. As per terms of reference.
2. Whether the petitioner left the job himself?
3. Relief.

5. The parties led evidence in support of their rival claims. I have heard Shri Darshan Singh, Authorised Representative of the workman and Shri O.P. Jain, Authorised Representative of the management and have gone through the case file. My findings on the above issues are as under:—

Issue No. 1 & 2 :

6. Both these issues are inter-connected and as such, are being taken up together for purposes of facility.

7. According to Mah: Singh. WW-1, he was appointed as Beldar in September, 1986. He stated that on 27th July, 1989, he was lifted from his home during night time and was taken to police station, where he was implicated in a false criminal case. He further stated that he had since been acquitted in the said criminal case relating to theft and he adduced in evidence copy of judgment as Ex. W-1. He further stated that he made an application to the management for allowing him to join his duties, but the management refused to accept that application and he then sent the said application by registered post, which was received back undelivered,—vide Ex. W-3. He admitted in cross-examination that he received letter dated 7th August, 1989 from the management on 9th August, 1989. However, no copy of such notice was placed on file by management.

8. The management examined Sarv Shri Kali Charan, MW-1 Mahabir Prasad, MW-2, Nasib Chand, MW-3 and Ram Parvesh as MW-4. While the testimony of Kali Charan, MW-8 and Mahabir Prasad, MW-2 relates to the police case registered against the workman, Nasib Chand, MW-3 and Ram Parvesh, MW-4 have stated that the management was still prepared to take the workman on duty.

9. It is admitted by Ram Parvesh, MW-4 in his cross-examination that he did not issue any registered notice to the workman to join his duties. The workman on the other hand, has claimed that he sent application dated 12th August, 1989 (Ex. W-2) to the management through registered post, but the same was received back undelivered,—vide Ex. W-3. In this application, the workman has stated that he was not allowed to join his duties. As already stated above, there is no document on the file to show that any registered notice was sent to the workman by the management to join his duties.

10. Admittedly, the management in this case, did not serve any charge-sheet on the workman, nor any enquiry was conducted by the management before dispensing with the service by not allowing him to attend to his duties. It is settled law that when the employer had treated to the workman to have absented from duty, it was simply not open to it to have brought an end to the relationship of master and servant without holding an enquiry in the matter and without recording a finding of guilty workman. In this connection, I find support for this conclusion from the decision of Hon'ble Supreme Court reported as *L. Robert D' Souza versus Executive Engineer, Southern Railway, AIR 1982—SC-853*. In that case, their Lordships of the Supreme Court had examined an almost identical case involving termination of service of the workman on the ground of absence without leave. The Supreme Court declared that absence without leave constitutes misconduct and it is not open to the employer to terminate the services without notice and enquiry or at any rate without complying with minimum principles of natural justice. Same view has been taken by the Supreme Court in a recent decision of *Shri D.K. Yadav versus M/s. J.M.A. Industries Ltd., 1993(4) SLR—126*.

11. Another latest Division Bench authority on this point is reported as *Saraswati Industrial Syndicate Ltd., versus Jai Bhagwan Jain and Others, 1994(3)RSJ-250*.

12. In the light of discussion above, I hold that the termination of services of the workman is illegal and there is nothing on the file to show that the workman had left the job himself. Since the termination of the services of the workman is illegal, the workman is entitled to reinstatement with full back wages and the condition of not claiming back wages as mentioned in Ex. M-4, can not be accepted in this case. Both these issues, are therefore, decided in favour of the workman.

Issue No. 3 Relief :

13. In view of my findings on the above issues, the termination of services of the petitioner is held illegal. The same is hereby set aside. The petitioner is reinstated in the same post forthwith, full back wages and benefit of continuity of service and other consequential benefits. The reference is answered accordingly, with no order as to costs.

B. R. VOHRA,

Dated:
2nd March, 1995

Presiding Officer,
Industrial Tribunal—cum—Labour
Court, Hisar.

Endst. No. 300, dated 6th March, 1995.

A copy, with two spare copies, is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour and Employment Department, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal—cum—
Labour Court, Hisar.